EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000793/2026

Held in Glasgow on 7 and 8 September 2026

Employment Judge P Rae

Mrs S Noreen — **Claimant**
In Person

Polo Foods Limited — **Respondent**
Represented by
Ms Ali
Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:

(a) The Claimant's claim for unauthorised deductions from wages, contrary to section 13 of the Employment Rights Act 1996, is well founded and succeeds. The Respondent is ordered to pay the Claimant **£18.32.**

(b) The Respondent failed to issue a written statement of particulars contrary to s1 ERA. The Tribunal Orders the Respondent to pay the Claimant the sum of **£760.64** representing 4 weeks' pay pursuant to section 38 of the Employment Act 2002.

(c) The complaint of unfair dismissal is dismissed due to lack of jurisdiction. The Claimant does not have the requisite qualifying service to bring such a claim.

WRITTEN REASONS

Background

1. The Claimant presented an ET1 on 6 April 2026 with complaints of unauthorised deductions from wages, breach of contract and constructive unfair dismissal.

2. In respect of sums owed, the Claimant seeks:

    1) Payment of £1,404.15 (£61.05) in respect of 23 shifts that she says she should have been made available for her to work but were not.

    2) Payment of £24.42 in respect of two hours deduced from pay on 2 December 2025 where her shift was curtailed due to a power cut.

3. The Claimant worked for the Respondent between 3 October 2025 and 19 January 2026, when she resigned. The nature of her engagement was a matter of dispute. The Respondent's position is that she was a worker on a zero hours contract. The Claimant's position is that she was an employee and worked on a 25-hour contract

4. This case had first been listed for a 3-hour hearing. Thereafter, on request of the parties a 2-day hearing was listed (23 and 24 July 2026). At the outset of day 1 of that hearing, the Claimant produced text message extracts that required certified translations to be obtained. The hearing was discharged before any evidence was heard to allow for translations to be obtained. The hearing was relisted and came before me.

5. The Claimant engaged in early conciliation with ACAS between 10 February 2026 and 30 March 2026. Accordingly, the claim is presented in time. An ET3 was lodged on 6 April 2026.

6. The issues for determination by the tribunal were

    1. Was the Claimant entitled to payments:

        a. For days between 3 October 2025 and 19 January 2026 where the Claimant expected to be provided with shifts, but they were not offered (there were 23 such instances)?

        b. For a shift worked on 2 December 2025 (5pm – 11pm), which was curtailed by two hours due to a power-cut?

2. Whether the Respondent's failure to make any payments due constituted an unauthorised deduction from the Claimant's wages contrary to section 13 ERA or otherwise breached the Claimant's contract.

Unfair dismissal or constructive dismissal

3. Did the Claimant have sufficient service to bring an unfair dismissal claim (2 years)?

4. If so, was the Claimant an employee (rather than zero-hours) 'worker' and so entitled to bring such a claim?

5. If so, was the Respondent in repudiatory breach of contract such that the Claimant was entitled to accept that breach, resign in response and treat herself as having been constructively unfairly dismissed?

Remedy

6. If the Claimant's claims are upheld what remedies should be awarded?

7. The Claimant produced a bundle of 128 pages (C1-128). The Respondent produced a bundle of 28 pages (R1-28) and a secondary bundle of 7 pages (RS1-7).

Procedure / Preliminary Issues

8. At the outset of the hearing, the Respondent's representative explained that Mr Ali (who owned the Respondent's undertaking and was their principal witness) may benefit from the assistance of a translator. This had not been requested in advance and was a matter that ought to have been anticipated by the Respondent well in advance of the first hearing in July, let alone the second listed date.

9. The Respondent's representative confirmed that Mr Ali was present in the building and he did speak English (as a second language). He had been capable of conversing with his representative in English and she had been able to take instructions. After discussion (and recognising the unsatisfactory position of having to postpone the hearing for a second time) parties agreed to proceed on the understanding that we would proceed slowly and ensure that Mr Ali understood proceedings as they progressed. I was prepared, but did not need to, adjourn proceedings if it appeared that Mr Ali was not following the evidence or able to fully participate.

10. The Hearing proceeded on that basis. I was satisfied that throughout the hearing Mr Ali understood the proceedings and questions being asked of him.

11. After presenting their initial ET3 the Respondent engaged legal representation. Substitute Grounds of Resistance were presented on 29 June 2026 (R1-3). I allowed them to stand on the basis that it largely reflected the original ET3, clarified the issues and did not prejudice the Claimant. The Respondent's facts and response to the claims remained consistent.

Findings in Fact

12. The Claimant was engaged by the Respondent between 3 October 2025 and 19 January 2026 on a zero-hours contract.

13. The Respondent is a franchisee of piri-piri chicken restaurants known as "The Ladz". The Respondent operate a restaurant in Coatbridge where they have 8 or 9 staff working for them over two shifts (11am – 5pm and 5pm to 11pm). The business operates as 'Polo Foods Limited'. Mr Ali is an owner and director.

14. The Claimant lives in Coatbridge and had been working weekends in an ice-cream shop in Bellshill. She sought employment closer to home with better hours. On 1 October 2025, the Claimant's landlady, Ms Evans, with whom the Claimant lives, enquired on the Claimant's behalf as to whether the Respondent might have any vacancies. The Respondent indeed had a vacancy.

15. The Claimant was invited to an interview with Mr Ali on 2 October 2025. Ms Evans drove the Claimant to that interview and accompanied her into the Respondent's premises. Ms Evans sat at the table next to the Claimant where the interview was taking place. She heard much of the interview, given her proximity to the parties, although she did not wish to appear to 'eavesdrop'.

16. The interview took place in English which is neither the Claimant nor Mr Ali's first language. It lasted around 10 minutes.

17. The Claimant explained to Mr Ali that her preference was to work weekdays: 5 days for 5 hours per day (excluding a meal break). During the discussion, with reference to working hours and arrangements, Mr Ali used the words "*it varies*" and "*variable*". This was heard by Ms Evans which she understood to mean that "*the hours varied*".

18. The Respondent offered the Claimant the opportunity to undertake a trial shift that same day. That was not convenient for the Claimant and so it was agreed that a period of trial and training would take place during the following day(s) on 3, 4 and 6 October 2025.

19. As the Claimant and Ms Evans were leaving the Respondent's premises, they realised that the rate of pay had not yet been discussed. The Claimant returned to ask Mr Ali what the pay was.

20. The parties still did not agree a rate of pay, beyond Mr Ali saying that it was "very good" or words to that effect. This was overheard by Ms Evans. The Claimant did not seek clarity as to what was meant beyond forming an assumption and expectation that her pay would better than the minimum wage, which was being paid at that time by her (then) employer.

21. When the Claimant left the Respondent's premises on 2 October, she had not agreed to work fixed days, hours or a rate of pay beyond stating her preferences. The Claimant believed that she would work 5 days per week for 5 hours per day (per her stated preference). Mr Ali believed the Claimant would work on a "variable" basis and on a zero-hours contract, which is the arrangement in respect of all of his other staff.

22. The Respondent does not employ any staff other than on zero-hour contracts. The Respondent does not guarantee hours to any staff member.

23. There was confusion between the parties and a lack of agreement on the question of both working days/hours and pay.

24. After starting, the Claimant asked Mr Ali on at least two occasions for a "contract". Despite this the Claimant was never issued with one nor was she issued with a statement of employment particulars as required by section 1 of the Employment Rights Act 1996.

25. The Respondent has a franchise-wide standard "*Induction Pack*" which includes, amongst other things, a section entitled "*Statement of Main Terms of Employment*". (R25). This was never given to the Claimant. This document reflects the terms and conditions that apply to all staff across the Respondent's business and the wider franchise. The document has four 'gaps' in it for variable fields to be manually inserted (these are: start date, job title, place of work and remuneration).

26. The document does not provide for variability in respect of any of the other terms (there being no other 'blanks'/gaps' to complete). Of note is that this document makes clear that the engaged staff member (whoever they may

be) is engaged on "**Zero**" hours (this appears in bold and underlined in the document).

27. The Claimant attended her trial shift and training period on 3, 4 and 6 October 2025.

28. During the first week (week commencing 6 October) the Claimant worked 4 shifts (7, 8, 9 and 10 October). The following week (week 2, commencing 13 October) the Claimant worked 5 shifts (Monday to Friday 13 - 17 October). That is the only week during which the Claimant was assigned 5 shifts. In the weeks thereafter the Claimant was typically assigned either 3 or 4 shifts per week (C74). Until she resigned there were no weeks when she was not assigned shifts. The Claimant and Respondent did not agree a minimum number of hours per week.

29. The Respondent runs its payroll on a two weekly cycle. Mr Mamood, who is the Respondent's external accountant, was responsible for administering and running the payroll.

30. On or around 23 October 2025, Mr Ali gave the Claimant an envelope containing £185 in cash. The Claimant did not count the money immediately, waiting until she got home. When she got home, she counted the contents. She calculated that she had been underpaid realising she had been paid around £8 per hour, rather than the national minimum wage £12.21 or greater. She also recognised that she had not been paid for her trial shifts.

31. The Claimant was upset. Ms Evans encouraged the Claimant to call Mr Ali to discuss the shortfall. The Claimant was reluctant to do so. Ms Evans attended the Respondent's premises and spoke to Mr Ali to address the Claimant's concerns. She said to Mr Ali that the Claimant was an intelligent university graduate, and not a "silly lassie" and that the Claimant should be paid properly. Mr Ali explained that on his accountant's return he would address the matter.

32. Mr Mamood (the accountant) had been on holiday and was unable to add the Claimant to the Respondent's payroll in mid-October. Mr Ali gave the Claimant the money intending it as a 'cash advance' until Mr Mamood was able to put the Claimant on the payroll and process her properly, which he did on return from holiday. Mr Ali did not wish the Claimant to be short of money in the intervening period so gave her the cash as an interim measure. This was not explained to the Claimant at the time.

33. The Claimant returned the cash payment and asked to be processed through the Respondent's payroll and paid into her bank account. That was important

to her. She explained that she wanted at least the national minimum wage and payment to be made by bank transfer. On Mr Mamood's return from holiday sums due were paid by bank transfer and the Claimant was provided with a pay slip (RS 1-7).

34. Thereafter, there was regular dialogue between the Claimant and Mr Ali about the calculation of wages/hours worked.

35. The Claimant's shift arrangements very much varied during her engagement, often to the point of being inconvenient. There was a lack of consistency and frequency. This frustrated the Claimant who regularly had to chase Mr Ali or his niece (who supported with the rota) to ascertain when and what shifts and the Claimant expected to work. There were occasions where the Claimant would be told at the very last minute that she had a shift that same day, which often proved inconvenient. However, the Claimant did not refuse any shifts offered. The Claimant did not present herself at the Respondent's premises for a shift unless she had been told she had one.

Power Cut

36. On 2 December 2025 the Claimant had agreed to work a shift from 5pm to 11pm. The Claimant had presented for work that day and was working when a power cut impacted on the local area at around 8.30pm which impacted on the Respondent's premises. At around 9pm the decision was taken to discontinue operations and close the restaurant for the evening. The Claimant supported with steps taken to clean and close the restaurant using best endeavours to do so, using light from her mobile phone. Staff were not paid between 9pm and the shift end at 11pm.

37. The Claimant worked between 9pm and 10.30pm preparing to close and clean the restaurant. The Claimant messaged and called her husband at 10.07pm (C106) explaining there had been a power cut and requesting that he come and pick her up. Despite remaining on site working until 10.30pm, the Claimant was only paid until 9pm.

38. On 2 and 9 January 2026, the Claimant asked to be paid for the two hours (9pm to 11pm) from the 2 December power cut (c100-101). She did not receive payment as requested.

Resignation

39. The Claimant became frustrated with the Respondent both in terms of her not being provided with the number of shifts that she expected and having to regularly engage with Mr Ali over her pay. On 19 January 2026, the Claimant

resigned (C2). She cited, amongst other things, the lack of being assigned 5 shifts per week consistently and the 2 hours pay that was not paid due to the power cut. The Claimant explained that she did not know how much notice she had to give as, despite repeated requests, she had not been provided with a written contract.

40. The Claimant did not work beyond 19 January 2026. That was the Effective Date of Termination.

Relevant Law

Unauthorised Deductions

41. An employee or worker has the statutory right not to have unauthorised deductions made from their wages. That right is contained in sections 13 to 27 of the Employment Rights Act 1996 ("**ERA**"). An employer may only make deductions if it is required or authorised by: (i) statute; (ii) a provision in an employee or worker's contract; or (iii) if prior written consent to the deduction has been given.

42. The protection is not limited to employees. It also applies to "workers" including those on "zero-hour" contracts. A worker, rather than an employee, is an individual who has entered into a contract to do or perform *personally* any work or services, unless the individual is carrying on a profession or business undertaking and the other party to the contract is a client or customer of that undertaking.

43. The definition of "*wages*" includes any fee, bonus, commission, holiday pay or other emolument referable to the worker's employment, whether payable under their contract or otherwise (s27 ERA).

44. Determining what is "*properly payable*" is a matter for an employment tribunal. That involves an assessment of the contractual position. In ***Agarwal v Cardiff University and others [2019] I.C.R. 443*** the Court of Appeal held that that employment tribunals have jurisdiction to determine the terms of the contract when considering a claim for unlawful deductions.

45. The burden of proving what is payable, and that a respondent has made a deduction, is on a claimant.

46. Where the total amount of wages paid by an employer falls short of the sum 'properly payable' that deficit counts as a deduction, unless it is occasioned by a computation error.

47. To be successful in an unauthorised deduction from wages claim, a claimant must demonstrate that they have earned the wages and/or that they were '*properly payable*'. Typically, that is by reference to work actually done (***Besong v Connex Bus (UK) Ltd UKEAT/0456/04/RN)***.

48. A failure by an employer to offer work, is not an unauthorised deduction. A claim in such circumstances is for breach of contract, if such a contractual duty so exists. This principle was established in ***New Century Cleaning Co v Church [2000] IRLR 27***, where the Court of Appeal confirmed that in piecework systems, a reduction in the rate of work does not amount to a deduction from wages.

49. Where an employment tribunal finds that an employer has made an unlawful deduction it must make a declaration to that effect and order the employer to pay to the worker the amount unlawfully deducted (ERA s24).

50. A complaint that an employer has made a deduction from wages must be brought within 3 months of the deduction, or where there is a 'series' of deductions, the last deduction in that series.

Breach of Contract

51. An employment tribunal has jurisdiction to hear a breach of contract claim under The Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994. Such a claim must arise, or be outstanding, on termination of the employment contract.

52. It is for a claimant to prove that the respondent was in breach of contract and that damages are payable.

Written Statement of Employment Particulars.

53. Section 1 of the Employment Rights Act 1996 requires an employee or worker to be provided with a written statement of employment particulars. This is a positive duty on an employer to inform an employee or worker what the terms of their engagement are. It sets out employer's understanding of the essential terms and affords an employee or worker the opportunity to challenge or correct any misunderstandings from the outset. This is a "day 1" requirement on employers.

54. Section 38 of the Employment Act 2002 deals with circumstances where an employer fails to provide a section 1 statement. It provides that where a Claimant is awarded compensation for any claims listed in Schedule 5 of that

Act (which includes an award for unauthorised deduction from wages) an employment tribunal:

> "*must…increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead" (section 38(3)(b))*.

55. A reference to the "*minimum amount*" is a reference to an amount equal to 2 weeks' pay and the "*higher amount*" is a reference to an amount equal to 4 weeks' pay (section 38(4)(a) and (b)). An award is not mandated if "*there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable*" (section 38(5)).

Unfair Dismissal

56. An 'employee' has the right not to be unfairly dismissed pursuant to s94 ERA. A Claimant must have two years' qualifying service and be an employee, rather than a worker, to qualify for the right

57. An employment tribunal does not have jurisdiction to hear a claim unless the Claimant meets that service requirement, unless one of the 'automatic' unfair dismissal reasons apply.

Witnesses / Evidence

58. The Claimant gave evidence on her own account. She was an impressive witness. She was credible and reliable. She felt that she had been wronged by the Respondent and was keen to address that. Her evidence reflected the contemporaneous exchanges with Mr Ali.

59. Ms Evans was also a credible and reliable witness. She was candid in her recollection of events and had done her best to protect and further the Claimant's interests. She was honest, open to challenge and presented well as a witness.

60. Mr Ali appeared somewhat guarded in his evidence albeit, however, he accepted that there had been a failure to properly document the relationship and the parties had been labouring under respective misapprehensions. However, he presented as credible and reliable.

61. Mr Mamood's evidence was limited to the question of the first payment. He was credible and reliable and recalled the events well.

Discussion / Decision

Constructive Unfair Dismissal

62. I will deal with the unfair dismissal complaint first. The Claimant does not have the required two years' service to bring such a claim. Accordingly, the Employment Tribunal does not have jurisdiction to hear this complaint. This Complaint is dismissed for lack of jurisdiction.

Deductions from Wages

63. There was a clear and distinct lack of agreement from the outset between the parties as to what the contractual working hours expected and being offered were. The Claimant expected to work 5 days per week for 5 paid hours per day. Mr Ali expected flexibility and variability over a zero-hours contract, consistent with all of his other staff. There was a lack of consensus between the parties.

64. This was a case that would have benefitted from the provision of a section 1 statement of written particulars from the outset. That never came to fruition, despite the Claimant's repeated requests for a contract.

65. The lack of agreement is attributable to an apparent communication breakdown between the parties, rather than either party behaving improperly. I acknowledge that the initial discussions about the key terms took place in neither the Claimant's nor Mr Ali's first language. The parties did not, from the outset, agree on the key fundamental terms or precise working arrangements (specifically and importantly) the hours of work or rate of pay. Those were important terms. The failure to agree and document these terms has presented room for misunderstanding, doubt and uncertainty.

66. The Claimant accepted variability in her shifts – they were not fixed or set, despite having indicated a preference for weekday working. However, she did not present herself for work in a manner that one might expect consistent with an agreement to work a specific shift pattern. She did not turn up each day at the Respondent's premises consistently at 11am or 5pm, ready and willing to work and expecting the Respondent to provide it. Instead, the Claimant waited for shifts to be allocated to her and chased the Respondent for clarity and confirmation of when/if she was working.

67. I am satisfied that the Claimant was not guaranteed a minimum number of hours. She was, in effect a zero-hours worker. There was a lack of 'mutuality of obligation' between the parties. There was no requirement for the

Respondent to offer the Claimant shifts and no requirement on the Claimant to accept them.

68. I am of the view that this is a case of clear misunderstanding between the parties. Again, these uncertainties could all simply have been remedied with a compliant “day 1” written statement, per section 1 of the ERA. That would have allowed the Claimant to challenge or reject the terms upon which she was being engaged and remedied any uncertainty from the outset.

Failing to Provide Shifts

69. I am satisfied that, consistent with other staff in the Respondent’s enterprise the Claimant’s engagement was one of a zero-hours basis. On balance, it would have been odd for the Claimant to be engaged on different, more favourable, terms to the other existing staff who were themselves on zero-hour contracts.

70. The Claimant seeks payment by way of unauthorised deductions for 23 days when she was not offered shifts. She did not attend the Respondent’s premises and present as ready, willing and able to work on those days. Put simply, the Claimant did not work the ‘missing’ shifts and so it cannot be said that she earned the wages associated with them. Sums were not earned on those missing days and so cannot be said to have been “properly payable” in respect of s13 ERA.

71. Failing to provide expected shifts that do not materialise is not an unauthorised deduction from wages: it is a breach of contract. The contract was one of zero hours and so the Respondent was not obliged to offer those shifts.

72. Accordingly, the claims in respect of missing or unallocated shifts (that the Claimant expected to be offered but was not) fails both as an unauthorised deduction from wages and breach of contract.

Power-cut

73. In respect of the power cut on 2 December, the Claimant had agreed to work from 5pm to 11pm. She presented for work and was prepared to finish her shift as planned. She had an expectation to be paid for the full shift.

74. The evidence supports a conclusion that the power cut happened at around 8.30pm. I have found as a fact that the Claimant worked until 10.30pm that evening in helping to close and clean the restaurant. She was only paid until 9pm. I found the Claimant’s account, that she worked to 10.30pm as credible

and, on balance, more likely to have happened than not. Given her distinct recollection of the events, I preferred her evidence in that regard. That was also consistent with her message and call to her husband at 10:07pm asking to be collected.

75. As detailed above, because the Claimant was on a zero-hours contract, it was indeed open to the Respondent to curtail the shift by 30 minutes (i.e. the portion that was 10.30pm to 11pm). That is the Respondent's prerogative when operating a zero-hours contract.

76. However, I find that the Claimant worked those 1.5 hours and therefore those sums were unlawfully deducted. I find that those were wages that were indeed earned by the Claimant and so properly payable. The Respondent is therefore liable to make payment to the Claimant of **£18.32.**

Written Statement of Employment Particulars

77. The Respondent was in clear breach of its section 1 ERA duty. Had the Respondent complied with its 'day 1' obligations it is unlikely that this claim would have arisen in the first place. The parties would have had a clear understanding from the outset of their respective obligations and the Claimant would have been afforded the opportunity to challenge or at least query the Respondent's understanding of the arrangement. That demonstrated the importance of issuing such a statement on or before 'day 1'.

78. I find the Respondent is in breach in its statutory obligations in this case. Having made an award under s23 ERA, I am also obliged to make an award under s38 of the Employment Act 2002, unless it is not just and equitable to do so.

79. I find it is just and equitable to make an award.

80. In such cases a Tribunal **must** award a minimum of 2 weeks' pay and can award up to 4 weeks' pay to reflect the Respondent's failure.

81. I do not believe the somewhat nominal value of the unauthorised deduction award is relevant. The question is what is 'just and equitable'.

82. If the Respondent had issued its written statement (which it had on file), there would be little dubiety about the matters raised in this claim.

83. I find that this case is on the more serious side of an employer's breaches. There was absolutely no attempt to comply with the obligation despite repeated requests for compliance by the Claimant. The Respondent also knew that it had to issue a s1 statement, it being included in its induction pack.

It was never issued. The failure to provide it left the circumstances of the Claimant's engagement entirely uncertain.

84. I do not consider this to be a minor or trivial breach. This was on the more serious end of the spectrum. I have reminded myself that I have broad discretion in determining what is just and equitable. I have not been provided with a satisfactory explanation for the failure by the Respondent.

85. I exercise my discretion and find that Respondent is liable to pay the Claimant 4 weeks' pay for its breach of section 1 ERA.

86. Four weeks' pay is calculated in accordance with Chapter 2 of Part 14 of the ERA which involves (for someone with irregular hours) taking the Claimant's average pay over a 12-week reference period. By reference to the Claimant's record of shifts (C74) and noting that a shift consisted of 5 paid hours at £12.21 per hour which equates to £61.05 per shift, I calculate the *average* weekly pay over the previous 12 weeks to have been £190.16. As such I make an award of **£760.64.**

87. In summary: The Respondent is ordered to pay to the Claimant **£778.96**

- 1.5 hour's pay from 2 December **(£18.32)**
- 4 weeks' pay **(£760.64)** in respect of the Respondent's section 1 failure.

Date sent to parties **20 October 2026**